

Public Hearing & Regular Meeting

Agenda Item #	2 - Public Hearing & 5 - Regular Meeting
Meeting Date	June 21, 2004
Prepared By	Linda S. Perlman Asst. City Attorney
Approved By	Richard M. Finn City Manager

Discussion Item	Issuance of a General Obligation Bond (short-term seven year loan) for the Purpose of Funding Street Improvements in the City of Takoma Park.
Background	<p>The Council has been reviewing various scenarios for funding street improvement work in the City, including borrowing money in order to complete the rehabilitation of City streets in accordance with the Street Study performed by EBA Engineering, Inc. At the June 14, 2004 Council Worksession, the Council, by motion, authorized the signing of a “term sheet” with Sun Trust Bank in order to lock-in the interest rate on a 7-year \$2,005,000.00 loan, the proceeds of which would be used to perform City street rehabilitation work.</p> <p>Sun Trust Bank has quoted the following terms and conditions to the City: (1) amount - \$2,005,000.00; (2) maturity - 7 years from the date of issuance; (3) interest rate - tax exempt fixed interest rate of 3.34% which will be held until July 15, 2004; (4) security - issuance of a general obligation bond by the City, backed by a pledge of the City’s full faith and credit for the repayment of the bond principal and interest. The proposed transaction would constitute a private negotiated sale of the City’s general obligation bond (short-term seven year loan) to Sun Trust Bank.</p> <p>City Charter Sec. 823(b) requires that there be a public hearing on any proposed new indebtedness that is greater than 5% of the budgeted revenues of the City for the fiscal year in which the bond is issued. The proposed bond issuance, in the principal amount of \$2,005,000.00, is more than 5% of the budgeted revenues (the budgeted revenues for FY 05 are \$15,383,186.00) and, thus, is subject to a public hearing. City Charter Sec. 823(b) further provides that the Council “shall not take final action on the proposed indebtedness less than 14 days following such hearing.” This means that, if there is a public hearing on the proposed bond (short-term seven year loan) issuance on June 21st, then the Council cannot pass, at 2nd reading, an Ordinance to issue the proposed \$2,005,000.00 bond until either its July 6th or July 12th meeting. The 3.34% interest rate quoted by Sun Trust Bank will only be held until July 15th. Other loan details are still being negotiated and will be presented Monday evening.</p>
Policy	The City of Takoma Park has the power to borrow money for public purposes and to evidence such borrowing by the issuance and sale of its general obligation bonds in the manner prescribed by Sections 823 - 824 of the City Charter and Sections 31 - 37 of Article 23A of the <u>Annotated Code of Maryland</u> . City Charter Section 823(a) specifically provides that the Council may authorize a “private negotiated sale of bonds” if it finds that such private negotiated sale is in the best interests of the City.

Fiscal Impact	The proposed general obligation bond will be in the principal amount of \$2,005,000.00, at 3.34% interest, for a 7 year term. Sun Trust Bank charges a bank fee of \$1,500.00 (this fee is not included in the bond amount). The City Attorney will serve as bond counsel for this transaction.
Attachments	Ordinance to issue City of Takoma Park General Obligation Bond 1-2004 for the purpose of funding street improvements throughout the City and Specimen Bond form.
Recommendation	<p>(1) Hold a public hearing on the proposed issuance of a \$2,005,000.00 general obligation bond (short-term seven year loan) for the purpose of funding street improvement work in the City.</p> <p>(2) Consider the Ordinance to issue City of Takoma Park General Obligation Bond 1-2004 at 1st reading.</p>
Special Consideration	

Introduced by:

First Reading:

Second Reading:

Effective Date:

ORDINANCE NO. 2004-

**AN ORDINANCE TO ISSUE CITY OF TAKOMA PARK
GENERAL OBLIGATION BOND 1-2004 FOR THE PURPOSE OF
FUNDING STREET IMPROVEMENTS THROUGHOUT THE CITY.**

WHEREAS, the City contracted with EBA Engineering, Inc. to perform a study to assess the condition of the City's streets ("Street Study"); and

WHEREAS, the Street Study included a condition assessment of each street in the City, including findings from subsurface as well as surface inspection of the street, established a priority list for street repairs based on the results of the condition assessment, and gave an estimate of the costs of repair by street and by total costs; and

WHEREAS, the Council has reviewed the Street Study and finds that there is a real need to rehabilitate the streets in the City; and

WHEREAS, the Council desires to accelerate its street rehabilitation work in order to improve the condition of the City's streets for the benefit of the citizens of the City; and

WHEREAS, the Council has discussed and explored various means of funding the necessary street improvements, including the issuance of a general obligation bond in order to obtain monies for performance of the street rehabilitation work; and

WHEREAS, City staff solicited bids to purchase a general obligation bond to be issued by the City in the amount of \$2,005,000.00 by private negotiated sale; and

WHEREAS, the City received three bids from separate financial institutions and has determined that the bid submitted by Sun Trust Bank is most beneficial to the City; and

WHEREAS, the Council finds that issuance of a general obligation bond by the City in order to obtain the necessary funds to repair and reconstruct City streets will allow the City to implement its street improvement program over a shorter period of time and, in particular, to rehabilitate the streets that the Street Study identified as needing total reconstruction or extensive base reconstruction, for the benefit and enhancement of the affected neighborhoods; and

WHEREAS, pursuant to Section 823 of the City of Takoma Park Charter, the Council has determined to issue a general obligation bond, to be known as "City of Takoma Park General Obligation Bond 1-2004," in the principal amount of up to Two Million Five Thousand Dollars (\$2,005,000.00) for the purpose of funding the performance of street improvements throughout the City.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF TAKOMA PARK, MARYLAND, pursuant to the authority of Section 823 of the City of Takoma Park Charter, as follows:

Section 1. Authorization, Terms, Form of Bonds.

(a) The City, through its properly designated officers, shall borrow upon its full faith and credit and shall issue and sell upon its full faith and credit a general obligation bond in the principal amount of Two Million Five Thousand Dollars (\$2,005,000.00), to be known as "City of Takoma Park General Obligation Bond 1-2004" (the "Bond"). The proceeds of the Bond shall be used for the purpose of funding the performance of street improvements in the City.

(b) The Bond shall bear an interest rate of 3.34% percent per annum, with a maturity of seven (7) years, and shall be paid in monthly installments of interest only for months one (1) through twelve (12), followed by monthly payments of principal and interest for months thirteen (13) through eighty-four (84), with payments to commence one (1) month from the date the Bond is issued.

(c) All other terms and conditions of the Bond shall be as indicated on the Specimen Bond, which is attached hereto and made a part of this Ordinance.

(d) Pursuant to the provisions of Section 823(a) of the City of Takoma Park Charter the Bond shall be sold at a private negotiated sale to Sun Trust Bank (the "Purchaser") and the Council finds that such private negotiated sale is in the best interests of the City.

Section 2. Execution. The Bond shall be executed in the name of the City and on its behalf by the Mayor, whose signature may be by facsimile, and the corporate seal of the City shall be imprinted thereon, attested by the City Clerk-Treasurer, whose signature may be by facsimile. In case any official of the City whose signature appears on the Bond shall cease to be such official prior to the authentication and delivery of any such Bond, or in the case that any such official shall take office subsequent to the date of issue of any such Bond, his or her signature, in either event, shall nevertheless be valid for the purposes herein intended.

Section 3. Delivery and Registration of Bond.

(a) The Bond will be delivered as soon as practicable, upon due notice and at the expense of the City, at such place as may be agreed upon between the Purchaser and the City, upon payment of the principal amount of the Bonds in immediately available funds

(b) The City Clerk-Treasurer shall act as registrar for the Bond and shall maintain registration books for the registration and registration of transfer of the Bond. No security or bonds shall be required of the City Clerk-Treasurer in the performance of the duties of registrar for the Bond.

(c) The City may deem and treat the person or entity in whose name any Bond shall be registered upon the books of the City as the absolute owner of such Bond, whether such Bond shall be overdue or not, for the purpose of receiving payment of, or on account of, the principal, premium, if any, of and interest on such Bonds and for all other purposes.

Section 4. Covenants.

(a) The Mayor and the City Clerk-Treasurer shall be the officers of the City responsible for issuing the Bond within the meaning of Section 1.148-2(b)(2) of the Arbitrage Regulations (defined below). The Mayor and the City Clerk-Treasurer shall also be the officers of the City responsible for the execution and delivery (on the date of the issuance of the Bond) of a certificate or certificates of the City (a "Tax and Section 148 Certificate") that complies with the requirements of Section 148 of the Internal Revenue Code of 1986, as amended ("Section 148"), and the applicable regulations thereunder (the "Arbitrage Regulations"), and such officials are hereby authorized and directed to execute and deliver a Tax and Section 148 Certificate to counsel rendering an opinion on the validity of the Bond on the date of the issuance of the Bond.

(b) The City shall set forth in the Tax and Section 148 Certificate its reasonable expectations as to relevant facts, estimates and circumstances relating to the use of the proceeds of the Bond or of any moneys, securities or other obligations on deposit to the credit of any account of the City which may be deemed to be proceeds of the Bond pursuant to Section 148 or the Arbitrage Regulations (collectively, the "Bond Proceeds"). The City covenants that the facts, estimates and circumstances set forth in the Tax and Section 148 Certificate will be based on the City's reasonable expectations of the date of the issuance of the Bond and will be, to the best of the certifying officials' knowledge, true and correct as of that date.

(c) The City covenants and agrees with the registered owner or owners of the Bond that it will not make, or (to the extent that it exercises control or direction) permit to be made, any use of the Bond Proceeds that would cause the Bond to be "arbitrage bonds" within the meaning of Section 148 and the Arbitrage Regulations. The City further covenants that it will comply with Section 148 and the Arbitrage Regulations which are applicable to the Bond on the date of issuance thereof and which may subsequently be made applicable thereto as long as the Bond remains outstanding and unpaid. The Mayor and the City Clerk-Treasurer are hereby authorized and directed to prepare or cause to be prepared and to execute any certification, opinion or other document, including, without limitation, a Tax and Section 148 Certificate, which may be required to assure that the Bond will not be deemed to be "arbitrage bonds" within the meaning of Section 148 and the Arbitrage Regulations. All officers, employees and agents of the City are hereby authorized and directed to take such actions, and to provide such certifications of facts and estimates regarding the amount and use of the proceeds of the Bond, as may be necessary or appropriate from time to time to comply with, or to evidence the City's compliance with, the covenants set forth in this Section.

(d) The City further covenants that it shall make such use of the proceeds of the Bond, regulate the investment of the proceeds thereof, and take such other and further actions as may be required to maintain the excludability from gross income for federal income tax purposes of

interest on the Bond.

(e) The City further covenants with the registered owner or owners of the Bond (i) that it will not take any action or (to the extent that it exercises control or direction) permit any action to be taken that would cause the Bonds or any portion of the Bonds to be “federally guaranteed” within the meaning of Section 149(b) of the Internal Revenue Code of 1986, as amended (the Code”) and (ii) that it will not make, or (to the extent that it exercises control or direction) permit to be made, any use of the proceeds of the Bonds or a portion of such proceeds that would cause the Bonds or a portion of the Bonds to be a “private loan bond” within the meaning of Section 141(c) of the Code.

(f) The Mayor and the City Clerk-Treasurer may make such covenants or agreements in connection with the issuance of the Bond as they or either of them shall deem advisable in order to assure the registered owner or owners of the Bond that interest thereon shall be and remain excludable from, gross income for federal income tax purposes, and such covenants or agreements shall be binding on the City so long as the observance by the City of any such covenants or agreements is necessary in connection with the maintenance of the exclusion of the interest on the Bonds from gross income for federal income tax purposes. The foregoing covenants and agreements may include such covenants or agreements on behalf of the City regarding compliance with the provisions of the Code as the Mayor or City Clerk-Treasurer shall deem advisable in order to assure the registered owner or owners of the Bond that the interest thereon shall be and remain excludable from gross income for federal income tax purposes, including (without limitation) covenants or agreements relating to the investment of Bond Proceeds, the payment of certain earnings resulting from such investment to the United States, limitations on the times within which, and the purpose for which, Bond Proceeds may be expended, or the use of specified procedures for accounting for and segregating Bond Proceeds. Such covenants and agreements may be set forth in a Tax and Section 148 Certificate.

Section 5. Authority to Take Action; Public Hearing.

(a) The Mayor, the City Attorney, the City Clerk-Treasurer and all other officers and employees of the City are expressly authorized, empowered and directed to take any and all action necessary to complete and close the sale and delivery of the Bond to the Purchaser, and to execute and deliver all documents, certificates and instruments necessary and appropriate in connection therewith, including, without limitation, any documents, certificates or instruments containing covenants or representations of the City for the benefit of the Purchaser that are reasonably requested by the Purchaser.

(b) As required by Section 823(b) of the City of Takoma Park Charter when a proposed indebtedness is greater than five percent (5%) of the City revenues budgeted for that year, the Council held a public hearing on the proposed issuance of the Bond on _____, 2004, and the Council did not take final action on adoption of this Ordinance less than fourteen (14) days following said hearing.

Section 6. Ordinance a Contract. The provisions of this Ordinance shall constitute a

contract between the City and the registered owner or owners of the Bond, and this Ordinance shall not be repealed, modified or altered in any manner materially adverse to the interests of such owner or owners while the Bond or any portion thereof remains outstanding and unpaid without the consent of the owner or owners of the Bond.

Section 7. Effective Date; Miscellaneous. This Ordinance shall become effective immediately upon its adoption, and it is the intent hereof that the laws of the State of Maryland shall govern its construction and the construction of the Bonds. Any copy of this Ordinance duly certified by the City Clerk-Treasurer or her successor in office shall constitute evidence of the contents and provisions hereof.

Adopted this ____ day of _____, 2004, by roll-call vote as follows:

Aye:

Nay:

Absent:

Abstain:

SPECIMEN BOND

**United States of America
State of Maryland
City of Takoma Park**

General Obligation Bond, 1-2004

\$2,005,000.00

THE CITY OF TAKOMA PARK (the "City"), a municipal corporation duly organized and existing under the Constitution and laws of the State of Maryland, for value received, acknowledges itself indebted and promises to pay to

SunTrust Bank (the "Bank")

or registered assigns or legal representative, the principal amount of Two Million Five Thousand Dollars (\$2,005,000.00), less the amount of any prepayments permitted hereunder, together with interest on the aggregate unpaid principal amount hereunder from the Date of Issuance set forth herein until payment is made in full.

Interest on the unpaid principal amount shall accrue at the rate of 3.34% per annum as follows: monthly installments of interest only (\$_____ per month) for months one (1) through twelve (12), followed by monthly installments of principal and interest (\$_____ per month) for months thirteen (13) through eighty-four (84), with payments to commence one (1) month after the Date of Issuance set forth herein. The entire unpaid balance, together with accrued interest on the aggregated unpaid principal amount, if not sooner paid, shall be due and payable seven (7) years from the Date of Issuance.

Principal and interest shall be payable in lawful money of the United States of America and the final installment of principal shall be payable upon presentation and surrender of this Bond at the office of the City Clerk-Treasurer, who has been appointed Registrar with respect to this Bond.

Principal of this Bond may be prepaid at the option of the City, as a whole, at any time or from time to time, without payment of any premium or penalty, upon at least thirty (30) days prior written notice to the Bank. Partial payments are prohibited.

This Bond is issued pursuant to Sections 31 to 37 of Article 23A of the Annotated Code of Maryland, as amended, Sections 823 to 824 of the City of Takoma Park Charter, as amended, and Ordinance No. 2004-__ adopted by the Council of the City of Takoma Park on _____, 2004, in which Ordinance the City designated this Bond as a "qualified tax-exempt obligation" within the meaning of Section 265(b) (3) of the Internal Revenue Code, as amended.

The full faith and credit of the City is irrevocably pledged for the payment of the principal of this Bond and the interest to accrue hereon.

The Registrar shall treat the registered owner of this Bond as the person or entity exclusively

entitled to payment of principal and interest and the exercise of all other rights and powers of the owner.

In case the date any installment due under this Bond is a date on which banking institutions are authorized or obligated by law to close at the place where the office of the Bank is located, then payment of such installment need not be made on such date, but may be made on the next succeeding business day, but if made on such next succeeding business day, additional interest shall accrue until the date the installment is actually paid.

Payment of all installments shall be made at the office of the Bank, 1445 New York Avenue, NW, Washington, DC 20005-2108, unless the Registrar shall be given written notice by the Bank of a different place of payment at least thirty (30) days before any installment is due.

All acts, conditions and things required by the Constitution and laws of the State of Maryland and the Charter of the City of Takoma Park, to happen, exist or be performed precedent to and in the issuance of this Bond have happened, exist and have been performed, and this Bond, together with all indebtedness of the City, is within every debt and other limit prescribed by the Constitution and laws of the State of Maryland and the Charter of the City of Takoma Park.

IN WITNESS WHEREOF, the City of Takoma Park has caused this Bond to be signed in its name by the manual signature of its Mayor, its corporate seal to be affixed hereto, and attested by the manual signature of the City Clerk-Treasurer, and its Date of Issuance _____, 2004.

CITY OF TAKOMA PARK, MARYLAND

By: _____
Kathryn H. Porter, Mayor

ATTEST:

By: _____
Catherine Waters, City Clerk-Treasurer

[Seal]

Transfer of Bond

Transfer of this Bond may be registered by the registered owner or the owner's duly authorized attorney upon presentation of the within Bond to the Registrar who shall make note of such transfer in books kept by the Registrar for that purpose and in the registration blank below.

Date of Registration

Name of Registered Owner

Signature of Registrar